

DEQ Response to Public and Agency Comments

Regarding

**Guidance for Developing a Ground Water Quality
Monitoring Program for Managed Recharge Projects by Land Application**



Idaho Department of Environmental Quality
September 14, 2006

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Comments

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Richard R. Rush
Vice President for Natural Resources
Idaho Association of Commerce & Industry
P.O. Box 389
Boise, ID 83701

- Comment 1.** Recommend the words ‘by **Land Application**’ be deleted from the title in the recharge guidance” in reference to the definition of land application in IDAPA 58.01.17.200 (Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater, Section 200)
- Response 1.** The **Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater** (IDAPA 58.01.17), Section 600.7a. allows Class A effluent to be used for ground water recharge.
- Ground water recharge is also addressed in IDAPA 58.01.16, Wastewater Rules. The definition for land application in this rule is “A processes or activity involving application of wastewater, surface water, or semi-liquid material to the land surface for the purpose of disposal, pollutant removal, or **ground water recharge**. DEQ is authorized to review water quality monitoring plans for recharge by land application only. Recharge by injection wells is regulated by IDWR.
- Comment 2.** “...we recommend the definition of **wastewater** should be copied into the Executive Summary from IDAPA 58.01.17.200”. By doing so, “**non-contact cooling water** could be evaluated within the scope of this guidance”
- Response 2.** Definitions for wastewater and non-contact cooling water will be added to the recharge guidance. The definition of non-contact cooling water will be added to the Wastewater Rules (IDAPA 58.01.16) to be presented during the 2007 legislative session.
- Non-contact cooling water is water used to reduce temperature that does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product. Non-contact cooling water is not considered wastewater. Non-contact cooling water can be land applied as recharge water as discussed in the Wastewater Rule, IDAPA 58.01.16. based on Department approval as described in Sections 600.04 and 600.5.
- Comment 3.** “...we prefer that the reuse document be called ‘an assistance document’ to make clear the distinction between guidance and rule”
- Response 3.** The Guidance for Developing a Ground Water Quality Monitoring Program for Managed Recharge Projects by Land Application is not defined in rule. It is intended to provide direction or to guide entities with developing monitoring plans consistent with applicable sections in the **Wastewater Rule**, IDAPA 58.01.16.600.

Norman M. Semanko
Executive Director and General Counsel
Idaho Water Users Association, Inc.
305 North 10th Street, Suite 530
Boise, Idaho 837026/23/2006

Comment 4. Section 1 of the guidance overstates DEQ's authority to approve a ground water quality monitoring program for recharge. The section should emphasize that the process is not mandatory for recharge and it is not rulemaking.

Response 4. DEQ disagrees that it has no authority to require the approval of recharge monitoring programs. DEQ's Wastewater Rules (IDAPA 58.01.16), at section 600.04, provide that if recharge waters are applied to the land surface, "Provision must be made for monitoring the quality of the ground water in proximity of the application site. The ground water monitoring program is subject to approval by the Department." This regulatory authority is consistent with the Ground Water Quality Protection Act and the Idaho Ground Water Quality Plan. The Ground Water Quality Protection Act at Idaho Code § 39-120, provides that DEQ is the primary agency to administer ground water quality protection programs for the state and directs the responsible state departments or boards to adopt rules that specify the general standards for determining actions necessary to prevent ground water contamination and cleanup actions necessary to meet the goals of the state. Idaho Code § 39-126 further provides that state agencies shall have the authority to promulgate rules to protect ground water quality as necessary to administer ground water protection programs in conformity with the Ground Water Quality Protection Plan. Section V-C of the Ground Water Quality Protection Plan states that the artificial recharge of ground water must be consistent with the policies and management objectives for water quality and quantity as defined in the Plan and the Idaho State Water Plan, and it directs DEQ, in cooperation with other agencies, to develop guidelines, management practices, and/or regulations to ensure that artificial recharge projects comply with the Ground Water Quality Protection Plan. Clearly, DEQ's rules require the approval of recharge monitoring programs, and this requirement is consistent with legislative authority and the Ground Water Quality Protection Plan.

If a managed recharge project degrades ground water quality to where it poses a threat to existing or projected future beneficial uses of ground water, the Ground Water Quality Rule IDAPA 58.01.11 gives DEQ authority to require appropriate actions necessary to stop the contamination.

DEQ is proactively providing the guidance to assist interested parties in developing an appropriate ground water quality monitoring program for DEQ review and approval.

Comment 5. Section 2 of the guidance states that DEQ is responsible for developing water quality monitoring programs under state law and complying with "the legislative mandates," not recharge projects.

Response 5. DEQ is responsible for approving ground water monitoring programs for recharge projects.

- Comment 6.** Section 3 of the guidance must make it clear that recharge projects are not required to develop monitoring plans and DEQ has no authority to approve or disapprove recharge projects.
- Response 6.** DEQ does not have approval or disapproval authority for recharge projects but does have authority to approve ground water quality monitoring plans or programs associated with a recharge project. Please see response to Comment 4.0 above.
- Comment 7.** Section 4 of the guidance states that “a ground water quality monitoring program must be developed for recharge projects, and the monitoring program is subject to DEQ approval.” There is no specific statutory authority that supports this statement.
- Response 7.** DEQ's Wastewater Rules (IDAPA 58.01.16), at section 600.04, provide that if recharge waters are applied to the land surface, "Provision must be made for monitoring the quality of the ground water in proximity of the application site. The ground water monitoring program is subject to approval by the Department." Please see response to Comment 4.0 above.
- Comment 8.** Section 5 of the guidance should make it clear that it is only guidance, not rulemaking. The public notice provisions are duplicative of IDWR public notification for water rights in Title 42, which includes water quality impacts under “local public interest” criteria. DEQ could submit comments then; this is an example of too many agencies doing the same thing. Need to expand case-by-case consideration in 5.5. Section 5.6 is repetitive of IDWR water right requirements and should be eliminated. Section 5.8 will create duplicate appeals; DEQ is overlapping with IDWR process. Coordination provisions in 5.10 are inadequate to address these concerns.
- Response 8.** To the extent it is not clear, DEQ will modify the document to indicate it is a guidance document, not a rule. The guidance sets forth factors DEQ may consider in determining approval of ground water monitoring programs for recharge projects.
- Case-by-case consideration, discussed in Sections 6.4.2 and 6.4.7, will be discussed in the executive summary. Section 5.5, also discussing case-by-case consideration, will be expanded to reference applicable sub-sections of Section 6.0.
- Technical staff from both DEQ and IDWR worked together to revise the guidance and to develop acceptable ground water quality monitoring programs for example recharge projects. DEQ will continue to work with IDWR to avoid duplication of process.
- Comment 9.** Section 6 of the guidance reads like a rule. Remove any binding, mandatory language, including requirement for approval by DEQ. Criteria in this section should relate to the monitoring program, not the recharge project.
- Response 9.** Section 6.0 of the guidance provides a description of factors to be considered in evaluating ground water quality monitoring programs as outlined in the Wastewater Rules, Land Application of Wastewater(s) or Recharge Waters (IDAPA 58.01.16.600). To the extent it is not clear, DEQ will modify the document to indicate it is a guidance document, not a rule.

Lynn Tominaga
Idaho Ground Water Appropriators, Inc.
P.O. Box 2624
Boise, ID 83701

Comment 10. Recharge should be designated as a beneficial use of water.

Response 10. Idaho Ground Water Appropriators, Inc. is welcome to introduce a rule petition to the Board of Environmental Quality to designate recharge as a beneficial use of water.

Comment 11. Monitoring requirements should be tailored commensurate with the size of the recharge project to avoid creating an obstacle for small, short-term recharge projects.

Response 11. As DEQ has attempted to emphasize in the guidance, the detail level of a monitoring plan will vary with the site and project. There is flexibility in monitoring requirements once sufficient information is documented.

In the guidance, Section 5.5 describing case-by-case consideration of ground water quality monitoring programs for recharge projects will be expanded. Section 6.0 states that programs will be considered case-by-case, based on the information submitted. In Section 5.10, if ground water quality is found to be degraded by the recharge, DEQ may require additional monitoring, modification, or cessation of the activity. If the ground water quality shows no indication of degradation, monitoring requirements may be reduced. The level of detail or minimum requirements for a ground water quality monitoring program of a recharge project is discussed in Section 6.4, with emphasis on site specific conditions and ambient ground water quality.

Comment 12. The designation of existing facilities or potential recharge projects within the current operations of irrigation districts, canal companies, and/or other system entities is not addressed.

Response 12. The guidance document does not apply to incidental recharge resulting from irrigation practices and delivery system leakage. The spilling of excess irrigation water into control structures to prevent catastrophic damage to irrigation delivery systems is an acceptable operational control methodology. Documentation of such spills should be maintained by the irrigation company. However, when water is managed specifically for the purpose of adding water to the zone of saturation by land application, it is considered recharge.

It is recommended that ground water quality monitoring programs for recharge be developed in advance. An approved program is then available when recharge water is available for the project. The requirements for beginning a project with a pre-approved program would be minimal.

DEQ has provided funding for analytical costs to be used in developing ground water quality monitoring programs for anticipated recharge sites, with IDWR implementing sampling efforts.

Comment 13. The monitoring agreement as outlined in Appendix E is open-ended, and IGWA has concerns about signing such an agreement. In the event that an enforcement action is brought against the responsible party, the liability should be limited to the actions related to the specific recharge project and not actions outside the scope of the project. Ground water users willingly assume responsibility for their actions, but not the actions of others who may have contributed to a problem outside their control.

Response 13. Entities proposing to recharge should identify the responsible party in the event ground water quality is degraded due to recharge. It is important to provide sufficient water quality information that characterizes the existing water quality prior to recharge and to identify and document contaminant sources that have or may have the potential to affect water quality.

Nancy J. Chaney, Mayor
City of Moscow
P.O. Box 9203
Moscow, ID 83843

Comment 14. The short time for public comment limits the opportunity for thorough review.

Response 14. A previous version of this guidance was open for public comment on September 14, 2004 for a 30 day period. Based on several requests, the comment period was extended to November 30, 2004. In December 2004, DEQ provided letters to all entities that commented, explaining that DEQ and IDWR would jointly develop two example monitoring plans to be incorporated as appendices and the agencies would work together on revisions to the guidance based on comments received in 2004.

On April 19, 2006 a revised guidance document with example monitoring plans was released for public comment. Letters and copies of the response summary for the comments received in 2004 were sent to those who commented in 2004, including the City of Moscow. The comment summary was placed on the DEQ website with the revised guidance.

Comment 15. In section 5.3 of the guidance, it is indicated that DEQ *may* provide notice to surrounding property owners within the potential zone of influence of the recharge operation. It is recommended that DEQ *should* be required to provide such notice to the public.

Response 15. The document is a guidance, or assistance document, not a rule. Mandatory language has been removed as suggested by others that have commented.

Comment 16. Section 5.6 in the guidance suggests recharge projects be developed by qualified parties; recommend language modification to *require* some level of experience in the development of aquifer recharge facilities.

Response 16. The guidance document recommends that ground water quality monitoring programs for recharge are developed by a licensed professional engineer, geologist or environmental scientist—in Section 5.6. The document is a guidance, or assistance document, not a rule. Mandatory language has been removed as suggested by others that have commented.

Comment 17. Section 6.2.1.a. in the guidance suggests determining soil recharge capacity prior to development of a monitoring plan; it seems imperative that these soils characteristics,

including recharge capacity, have to be determined prior to development of the recharge project details and the corresponding monitoring plan.

Response 17. In Section 6.2.1.a, DEQ suggests recharge capacity be determined prior to developing a ground water quality monitoring program for the site. DEQ will emphasize that such information is useful to determine if the site is suitable for or capable of recharge.

Comment 18. Section 6.4.7 in the guidance addresses the constituents recommended for water quality testing but has little mention of the appropriate procedures and methodologies to be utilized for testing. It is recommended that the section be modified to direct the applicants towards testing methods that are in conformance with the industry standards as set forth by EPA, The Clean Water Act, IDAPA, ASTM, and other applicable guidelines.

Response 18. The Clean Water Act of 1972 makes it unlawful to discharge pollutants into navigable waters and establishes Water Quality Standards. The Safe Drinking Water Act Amendments of 1996 is a regulatory program for Public Drinking Water Systems. This Act established drinking water standards or maximum contaminant levels. The Ground Water Quality Standards in the Ground Water Quality Rule, (IDAPA 58.01.11.200.1) for Idaho are listed in Appendix A of the guidance. The Ground Water Quality Standards are based on EPA drinking water standards associated with The Safe Drinking Water Act. Chemical Abstract Service Numbers are listed for most constituents and can be cross-referenced to EPA approved analytical methods.

In the guidance, the project manager is advised to contact an EPA certified laboratory for appropriate sample containers and sampling methods for major anions, major cations, metals and bacteria.

For pesticides, the guidance lists immunoassay screening or appropriate EPA approved analytical method. An immunoassay screen is used by the USGS and IDWR in the Statewide Ambient Ground Water Quality Network as a useful indicator.

For volatile organic compounds (VOC), EPA analytical methods are listed.

The guidance recommends the responsible party consult with ASTM, the Standard Methods for the Examination of Water and Wastewater, 20th edition, the American Public Health Association and the Water Pollution Federation for the most recent analytical methods for microorganisms.

Travis L. Thompson
Barker, Rosholt & Simpson LLP
205 N. Tenth St., Suite 520
Boise, ID 83701

Comment 19. Section 1 of the guidance needs to emphasize that the purpose of the guidance is to recommend a process, and that it is not a requirement.

Response 19. To the extent it is not clear, DEQ will modify the document to emphasize it is guidance, not a rule.

Comment 20. In Section 2 of the guidance, DEQ should clarify that the Ground Water Quality Protection Act and the Idaho Ground Water Plan are directed towards state agencies, not parties who conduct managed recharge. There are no legislative mandates relating to a ground water quality monitoring plan that parties must comply to prior to recharge

Response 20. The Ground Water Quality Protection Act directs state agencies with roles and responsibilities in Section 2. However, Section 1 of the Act, Idaho Code § 39-102, defines state policy on environmental protection and ground water as a valuable public resource. Furthermore, the Act states that “All persons in the state should conduct their activities so as to prevent the nonregulated release of contaminants into the ground water.” Idaho Code § 39-102(3)(c).

If a managed recharge project degrades ground water quality to where it poses a threat to existing or projected future beneficial uses of ground water, the Ground Water Quality Rule, IDAPA 58.01.11, gives DEQ authority to require appropriate actions necessary to stop the contamination.

While there is no specific legislative mandate to monitor ground water quality associated with a recharge project, DEQ is authorized to adopt ground water quality protection programs and rules consistent with the Ground Water Quality Protection Plan. The plan instructs DEQ, in cooperation with other state agencies, to develop, among other things, rules to ensure that artificial ground water recharge projects comply with the Ground Water Quality Plan. Please see response to comment 4.0 from Idaho Water Users Association, Inc.

DEQ's Wastewater Rules, at section 600.04, provide that if recharge waters are applied to the land surface, "Provision must be made for monitoring the quality of the ground water in proximity of the application site. The ground water monitoring program is subject to approval by the Department."

Comment 21. Section 3 of the guidance needs to explain that ground water quality monitoring is not a requirement for managed recharge projects. Although DEQ appears to have authority to review and approve ground water monitoring plans that may be submitted, DEQ approval is not required for a party diverting water for recharge purposes pursuant to a valid water right.

Response 21. See response to Comment 4.0 from Idaho Water Users Association, Inc.

If a managed recharge project degrades ground water quality to where it poses a threat to existing or projected future beneficial uses of ground water, the Ground Water Quality Rule gives DEQ authority to require appropriate actions necessary to stop the contamination.

Comment 22. Section 5 of the guidance needs to clarify that the document is guidance, not rule; DEQ should emphasize case-by-case consideration, including the history and location of programs, when reviewing proposed ground water quality programs.

Response 22. In the executive summary, it is stated that DEQ is proactively providing the guidance to assist interested parties in developing an appropriate monitoring plan for DEQ review. To the extent it is not clear, DEQ will modify the document to indicate the document is guidance, not a rule.

Section 5.5 of the guidance discusses that case-by-case consideration will be expanded. Section 6.0 states that programs will be considered case-by-case, based on the

information submitted. The minimum requirements are discussed in Section 6.4, with emphasis on site specific conditions and ambient ground water quality. In section 6.2.3.a, it is suggested that past, present, and future land use and related structures be described in the recharge site characterization.

Comment 23. The last sentence in Section 5.7 of the guidance should be removed. DEQ has no authority to issue “a wastewater land application permit” for recharge projects. DEQ’s Wastewater Rules mistakenly includes recharge waters.

Response 23. DEQ is not issuing a wastewater land application permit for recharge projects, unless the recharge water is classified as wastewater. Please note that Section 600.01 of the Wastewater Rules, which requires a permit prior to land application of certain wastewaters, is not referenced in the recharge guidance. In the purpose of the executive summary, and in Section 1.0 of the guidance, DEQ will modify the guidance to address that if the source of water is treated wastewater, including Class A effluent, then the project is subject to the Rules for Reclamation and Reuse of Municipal and Industrial Wastewater.

Comment 24. Section 6 of the guidance should emphasize that recommended parts of a program may not be applicable in all situations. Where managed recharge has already occurred without documented effects to water quality, there should be no need for costly studies. Suggested programs are overly burdensome and may discourage ground water monitoring programs. Also need to clarify that confining recharge may not always be possible; for example, spring flooding could extend recharge water beyond a particular site.

Response 24. Sections 5.5 and 6.0 of the guidance discuss that ground water quality monitoring programs for recharge projects will be considered on a case-by-case basis, based on the information submitted. In Section 5.10, if ground water quality is found to be degraded by the recharge, DEQ may require additional monitoring, modification, or cessation of the activity. If the ground water quality shows no indication of degradation, monitoring requirements may be reduced. The minimum requirements are discussed in Section 6.4, with emphasis on site-specific conditions and ambient ground water quality.

The guidance document does not apply to incidental recharge resulting from irrigation practices and delivery system leakage. The spilling of excess irrigation water into control structures to prevent catastrophic damage to irrigation delivery systems is an acceptable operational control methodology. Documentation of such spills should be maintained by the irrigation company. However, when water is managed specifically for the purpose of adding water to the zone of saturation by land application, it is considered recharge.

Comment 25. In Section 6.3 of the guidance, DEQ should clarify that the guidance is for ground water quality monitoring programs, not the managed recharge project.

Response 25. DEQ does not have approval or disapproval authority for recharge projects, but does have authority to approve ground water quality monitoring plans or programs associated with a recharge project. Please see response to Comment 4.0 above.

This guidance is provided to those individuals that are developing a ground water monitoring program, which includes persons planning managed recharge projects. Section 6.3 discusses an evaluation to determine if the recharge project has the

potential to adversely affect ground water quality. Suggestions are provided that should be considered to ensure the project will be protective of the ground water quality.

Comment 26. Section 6.4 of the guidance should not prohibit parties from performing voluntary ground water quality monitoring because of restrictive or costly studies that are suggested in the guidance. DEQ should take historical recharge with no documented effects on ground water quality into consideration.

Response 26. DEQ encourages voluntary ground water quality monitoring. Ground water contamination from irrigation canals has been documented in the Mountain Home area. Section 5.5 describes case-by-case consideration of recharge projects. Section 6.0 states that programs will be considered case-by-case, based on the information submitted. In Section 5.10, if ground water quality is found to be degraded by the recharge, DEQ may require additional monitoring, modification or cessation of the activity. If the ground water quality shows no indication of degradation, monitoring requirements may be reduced. The minimum requirements are discussed in Section 6.4, with emphasis on site-specific conditions and ambient ground water quality.

Comment 27. Section 6.5 needs to clarify that DEQ does not have the authority to approve/disapprove managed recharge projects. If a party submits a monitoring program, and DEQ fails to approve it, the recharge project itself is not subject to any “enforcement action.”

Response 27. DEQ's Wastewater Rules, at section 600.04, provide that if recharge waters are applied to the land surface, "Provision must be made for monitoring the quality of the ground water in proximity of the application site. The ground water monitoring program is subject to approval by the Department."

Comment 28. Emphasize that the guidance is not an agency rule giving DEQ authority to approve/disapprove recharge projects.

Response 28. In the executive summary, it is stated that DEQ is proactively providing the guidance to assist interested parties in developing an appropriate monitoring plan for DEQ review and approval. To the extent it is not clear, DEQ will modify the document to indicate it is guidance not a rule. Please see response to Comment 4.0 above. DEQ does not have approval or disapproval authority for recharge projects but does have authority to approve ground water quality monitoring plans associated with a recharge project.

John Simpson
Barker Rosholt & Simpson
jks@idahowaters.com

Comment 29. Section 4.2.2.01.b should read “Injures a beneficial use of ground water or hydraulically connected surface water bodies;”

Response 29. Section 4.2.2.01.b. in the guidance is taken directly as worded from IDAPA 58.01.11.400.01.b of the Ground Water Quality Rule.
<http://adm.idaho.gov/adminrules/rules/idapa58/58index.htm>

Comment 30. The document should give equal consideration to the water quality effects on surface water.

Response 30. This guidance is for developing a ground water quality monitoring program for surface water being introduced into ground water.

John R. MacMillian, Ph.D.
Vice President
Clear Springs Foods, Inc.
Corporate Office P.O. Box 712
Buhl, ID 83316

Comment 31. “I want to compliment IDEQ for the comprehensive guidance”; DEQ has “considered potential risks and developed understandable guidance” that “provides good suggestions to guide individuals interested in managed recharge . . . Those involved in recharge projects should draw comfort from knowing the potential for monitoring flexibility once sufficient data is collected that supports ground water protection requirements . . . found the example monitoring programs very helpful.”

Response 31. Thank you.

Comment 32. “The guidance does suggest that a Best Management Plan (BMP) may need to be instituted. Are there examples of BMP’s that could be included in the guidance?”

Response 32. DEQ has published “Compendium of Best Management Practices to Control Polluted Runoff” describing BMPs for agricultural activities, silviculture activities, hydrologic and habitat modification activities, mining activities, urban activities/storm water runoff, transportation activities, and marinas and recreational boating. Some of the BMPs for those activities maybe applicable to some recharge projects. For example BMP’s related to construction could be applicable to constructed recharge basins. DEQ will reference the compendium in the recharge guidance. Currently there is not a document relating specifically to recharge BMPs for Idaho. Since managed recharge is relatively new in Idaho, DEQ and IDWR should compile BMPs from the compendium and from BMPs that have been demonstrated successful to recharge projects in other states in a supplemental recharge document. As projects are undertaken in Idaho, it is expected that area-specific BMPs will be developed and should be added to the supplemental document. In the meantime, the Compendium of BMPs will be referenced in the guidance.

John Berndt
Blackfoot River Ranch
Blackfootranch@aol.com

Comment 33. “How can this idea of taking water out of a flowing river, be compliant with the mission to protect the quality of air, land and water? . . . Adding potentially contaminated water to a natural plumbing system that has filtered water in it, can NEVER be fixed if it is a failure. Growing vegetables in the desert has always been a touchy subject and it obviously is having negative affects . . . How can we know where the water flows to?”

Response 33. The guidance provides a description of information necessary (including natural filtration) for DEQ to evaluate whether the recharge project site offers adequate

assurance that the project will not impair the quality of ground water. Ground water and recharge water quality monitoring is intended to ensure the quality of the water used for recharge will not degrade existing ground water quality.

Dick Rogers
Rj_rogers@netzero.net

Comment 34. Requests additional 45 days for review. Concern that the 30+ comments previously submitted in 2004 were not specifically addressed.

Response 34. This guidance was previously open for public comment on September 14, 2004 for a 30 day period until October 15, 2004. Based on several requests, the comment period was extended for 90 days to November 30, 2004. In December 2004, DEQ provided letters to all entities that provided comment, explaining that DEQ and IDWR would jointly develop two example monitoring plans to be incorporated as appendices, and the agencies would work together on revisions to the guidance based on comments received in 2004.

On April 19, 2006 a revised guidance document with example monitoring plans was released for public comment. Letters and copies of the response summary for the comments received in 2004 were sent to those who commented in 2004. Many of your comments were combined by subject and were addressed in DEQ's response to public comments. DEQ was unable to reach you by phone prior making a decision regarding an extension. As of 12:01 p.m. (MST) on May 19, 2006, no other requests for a comment period extension were received, and the comment period was not extended. DEQ has invited you to make an appointment with DEQ staff to discuss your comments.